IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/03/2003

CORAM

THE HON'BLE MR.JUSTICE E.PADMANABHAN

WRIT PETITION No.3862 of 2000

S.Veerakumar ..Petitioner

-Vs-

1. State Bank of India
by its Chairman
State Bank Bhavan
Madame Cama Road
Mumbai-21

2. State Bank of India
rep. by its Chief General Manager
(Personnel & HRD Dept).,
Local Head Office
21, Rajaji Salai
Chennai-1

3. State bank of India
rep. by its
Regional Manager
Zonal Office, Region-II
Madurai-2 ..Respondents

For petitioner:: Mr.J.Radhakrishnan or
M/s.A.Muthukumar
& P.Nareshkumar

For respondents: Mr.S.Kanniah

Petition filed under Article 226 of The Constitution of India praying for the issue of a writ of certiorarified mandamus as stated therein.

:O R D E R

The petitioner has prayed for the issue of a writ of certiorarified mandamus calling for the records of the respondents relating to the payment of pension to the petitioner and quash the proceedings of the 3rd respondent in PER PEN 4058 dated 29.10.1998 and of the 2nd respondent in PER/SUR/DS/No.6762, dated 3.1.2000 and further direct the respondents to sanction and pay the

petitioner pension due along with arrears from 1.8.1991 with interest and direct the respondents to extend the 1st respondent's Scheme or Medical benefit to retired employees" to the petitioner and to his spouse.

2. With the consent of counsel on either side, the writ petition itself is taken up for final disposal. Heard Mr.J.Radhakrishnan, for Mr.A.Muthukumar, learned counsel appearing for the petitioner and Mr.S. Kanniah, learned counsel appearing for the respondents. The petitioner claims that he was a temporary part time employee of the first respondent bank from 15.6.1967 on a consolidated salary of Rs.26 per month and was holding the post of part time watchman. Though the appointment was a part time job, the petitioner was required to serve as a full time employee besides he was called upon to discharge the dues of a messenger and that of a watchman. On 7.8.1974, the petitioner was appointed as Sweeper + Water boy on a basic salary of Rs.122 per month. The petitioner attained the age of superannuation and he was permitted to retire on 31.7.1991. The State Bank Staff union Madras Circle congratulated the petitioner on the date of superannuation and praised the petitioner. They also gave a cheque for Rs.5000/= in appreciation of the petitioner's services. Despite rendering 24 years of service no pension has been paid, but only a gratuity of Rs.24196-65 was paid. The petitioner claimed medical benefits to which the retired employees of the Bank Employees are entitled to. However, the third respondent informed the petitioner that the petitioner is not eligible for pension since the petitioner joined the service at the age of 42. All the requests made by the petitioner and demands made by the petitioner for pension have been negatived. The stand of the respondents that the petitioner is not entitled for pensionary benefit is unsustainable and it is not warranted. Hence the petitioner has approached this court seeking the relief of mandamus.

3. The petitioner further contended that he was born on 16.7.1931, he was 36 years when he joined initially as a temporary part time employee and subsequently appointed as a full time sweeper cum water boy on 7.8.1974. Therefore the petitioner is entitled to payment of pension as he has rendered 24 years of service. Under Rule 22(i)(a) of the State Bank of India Pension Fund Rules, the petitioner is entitled for payment of pension. The respondents are under a misconception, the order appointing the petitioner permanently in the bank was made on 7.8.1974. The stand of the respondent that services prior to the date could not be reckoned as pensionable service, which approach of the respondent is illegal, unjust and unwarranted. The respondents ought to have treated the petitioner as a member of the Pension Fund. The petitioner fall under the category of workman and he is entitled to the benefits. At any rate Rule 8(c) of the Pension Rules prescribing 38 years of age as the eligible age of entry itself is unreasonable, arbitrary, illegal and unconstitutional when there is no age limit prescribed for the appointment of employees by the bank.

4. On behalf of the respondents, a counter has been filed contending that the writ petition is not maintainable either in law or on facts. The writ petition is highly belated. The petitioner is guilty of laches and after a lapse of 8 long years the petitioner has approached this court. It is contended by the respondent that on the ground of laches the writ petition is

liable to be dismissed.

5. It is contended by the respondents that the petitioner entered the services of the respondent bank as a Sweeper cum Water boy on 7.3.1 984. Prior to that the petitioner's services were utilised as a temporary part time employee as a night watchman. The petitioner's date of birth as furnished by him is 16.7.1931. When the services were confirmed he was aged more than 43 years and he was allowed to retire on 31.7.1991 on his attaining the age of 60 years. In terms of Rule 2 0 of the State bank of India Employees' Pension Fund Rules, the pensionable service will commence from the date of confirmation of the petitioner and shall cease on the completion of 58 years of age. Computing so, the petitioner has put in 14 years and 11 months and 9 days of pension service only. Therefore he is not eligible to get pensionable benefits as he was over aged at the time when he was confirmed in banking service on 7.3.1974.

6. As per the existing Rules, the petitioner is not entitled to any payment of Pension as he was more than 38 years of age on the date of his confirmation in the Bank. Hence the request for pension has been rightly rejected. The initial appointment being part time and temporary the same cannot be reckoned for p urpose of pension. The very order of initial engagement would disable the petitioner from claiming the said services for any purpose much less for pension. The petitioner's request for pension has been rightly declined and no interference is called for.

7. As the petitioner was more than 42 years as on 7.3.1991, the date of appointment, he was ineligible to be admitted to the Pension Fund Scheme of the Respondent Bank. Rule 22(1) of the S.B.I Pension Fund Scheme Rules have no application whatsoever since he has not completed the pensionable service in the respondent bank. The claim that the petitioner was a permanent employee and therefore he is entitled to pension is unsustainable.

8. The petitioner factually accepted his subsequent absorption as permanent employee in the bank by the order dated 7.3.1974. Absolutely there are no merits. The petitioner was not paid pension but he was paid gratuity under the State Bank of India Gratuity Rules, which is more than the amount payable under The Payment of Gratuity Act. The challenge made to the rules cannot be sustained. The contention that others who were placed identical to the petitioner have been treated differently is devoid of merits and the petitioner is called upon to substantiate the same. The challenge to the Rules is devoid of merits and unsustainable.

9. The points that arise for consideration are:
(A) Whether the petitioner is entitled for payment of pension claimed by him for the services rendered under the State bank of India Pension Fund Scheme?
(B) Whether the petitioner is entitled to avail the benefit under the Medical Benefit on retirement from the respondent Bank?
(C.) Whether the impugned proceedings are liable to be quashed?
(D) Whether the Rule 8(c) of the Pension Rules is

unconstitutional, arbitrary and liable to be declared as illegal?
(E) To what relief, if any?

10. The petitioner was admittedly engaged as a part time night watchman on a consolidated wage of Rs.26/= per month from 15.6.1967. The very appointment order would show that it will not confer any right or any right to claim permanent appointment in the bank. While taking advantage of certain certificates, it is sought to be contended by the petitioner that he has worked for more than the required hours and hence he is deemed to be a permanent employee. But the petitioner cannot claim that he was a regular employee prior to his being appointed as Sweeper cum water boy with effect from 7.3.1974. The petitioner has to demit his office on 31.7.1991 on attaining the age of superannuation.

11. There cannot be any dispute as to the earlier part time engagement between 16.6.1967 and 7.3.1974. Only from 7.3.1974, the petitioner became the regular employee of the respondent State Bank. The part time engagement cannot be reckoned for any purpose whatsoever. Hence the claims of the petitioner has to be considered on the basis of his appointment on 7.3.1974, which post he held till 31.7.1991.

12. Concedingly, the petitioner has been paid gratuity as per the scheme which the petitioner has received immediately after retirement without any demur. Though the petitioner has demited office on 31.7.1991, the present writ petition has been filed only on 21st of February 2000 after a lapse of eight long years. The petitioner is obviously guilty of laches and the present attempt is to resurrect the claim which is stale and already barred by limitation. The writ petition is highly belated and the petitioner is guilty of latches and consequently on this short ground the writ petition is liable to be rejected.

13. The petitioner claims that he is entitled to payment of pension under the State Bank of India Employees Pension Fund Rules which came into force on 1s of July 1955. Rule 2(2) defines the various expressions including "member", "salary" etc., A member means any person in the service of the bank, who has been admitted to the membership of the Fund. In terms of Rule 7 every permanent employee in the service of the bank who is entitled to Pension benefits under the terms and conditions of his service shall become a member of the Fund from the date on which he is confirmed in the service of the Bank. Rule 8 provides that no employee shall be eligible to become a member of the Fund if he is over 38 years of age. Further an employee should contribute to the Fund every month on his being admitted to the Fund an amount equal to 5% of his salary subject to maximum prescribed in the scheme. Rule 22 provides that a member is entitled to pension under the Rules on retiring from bank's service. The petitioner has never contributed for the Pension Fund.

14. Rule 22 reads thus:-

"22(i) A member shall be entitled to a pension under these rules on retiring from the Bank's service-

(a) After having completed twenty years' pensionable service provided that he has attained the age of fifty years;
(b) After having completed twenty years' pensionable service, irrespective of the age he shall have attained, if he shall satisfy the authority competent to sanction his retirement by approved medical certificate or otherwise that he is incapacitated for further active service;
(c) After having completed twenty years pensionable service, irrespective of the age he shall have attained at his request in writing.
(d) After twenty five years pensionable service."

15. In the present case, admittedly, all these years the petitioner has not been admitted as a member of the Pension Fund of the State bank of India Employees' Pension Fund Rules, nor he has contributed, nor he is eligible to be admitted as has been rightly pointed out by Mr.S.Kanniah, learned counsel appearing for the respondents. The petitioner has crossed 38 years of age on the date of his appointment as Sweeper cum water boy. As seen from the date of birth entry entered in the service register. Therefore the petitioner cannot claim that he has been admitted as a member of the scheme.

16. As already pointed out, the petitioner is not entitled to become a member of the scheme nor he has been admitted factually, nor he has contributed 5% of his salary as stipulated by Rule 9(i). Therefore it is clear that the petitioner is not entitled to claim admission nor could claim the benefit under the scheme. Even in terms of Rule 22, the petitioner is not eligible for payment of pension as he has not put in the minimum years of pensionable service. Hence the petitioner's claim for pension as per the Rules cannot be sustained.

17. The learned counsel referred to a circular dated 2.5.1987 of the respondent Bank and the amendment issued to the Pension Rules. Even though it is not applicable, even applying that also, the petitioner will not be entitled to avail the scheme.

18. As regards the claim of medical benefit under the State Bank of India Retired Employees Medical Benefit Scheme, as seen from the salient features of the Scheme, the scheme is to the benefit of existing and future pensioners of State bank of India who retire(d) from the Bank on completion of 30 years of pensionable service or who has retired on medical grounds. The petitioner has not put in 30 years of pensionable service. Therefore the petitioner is not entitled to claim medical benefit under the Staff Welfare Scheme of S.B.I Retired Employees.

19. The learned counsel for the petitioner also relied upon the amendment introduced, namely the State bank of India Employees' Pension Fund (Amendment) Rules 1997 which came into force on 1.11.1993. Even this also will not advance the case of the petitioner. Mr. Radhakrishnan, learned counsel strained himself and took the court through the entire scheme and contended that the petitioner is entitled to payment of Pension as well as the Medical Fund Schemes, which claims cannot be sustained. Mr.S.Kanniah is well founded in his arguments and the rejection by the respondents deserves to be sustained.

20. The learned counsel for the petitioner referred to the pronouncement of the Supreme Court in Kasturi Vs. Managing Director, State Bank of India, Baombay reported in AIR 1999 SC 1981 in support of his contention that the benefit of amended Pension Scheme is available to old retirees. But on facts, the benefit of the amended scheme is not applicable to the case on hand and in any view of the matter, this pronouncement will not advance the case of the petitioner. Even applying the amended Rule, the petitioner will not be entitled to claim the Pension.

21. The learned counsel for the petitioner relied upon the pronouncement in Dhan Raj Vs. State of Jammu and Kashmir, reported in AIR 19 98 SC 1747 and contended that temporary appointment also has to be reckoned for the purpose of pension. But on facts and in terms of the existing rules the said pronouncement of the Apex Court will not advance the case of the petitioner. Being a part time engagement for a limited period, the same cannot be reckoned for the purpose of pension. The legal position is well settled.

22. Mr.S.Kanniah, learned counsel for the respondents in turn has relied upon the pronouncement of the Karnataka High Court in A. Harihara Ayyar Vs. State Bank of India, reported in 2001 Lab.I.C.2550 where the Karnataka High Court had considered the scope of Rule 19 of the State Bankof India Welfare Employees Medical benefit Scheme and sustained the validity of the Rule which prescribes the eligibility condition of 30 years of pensionable service. The Karnataka High Court in this respect held thus:-

"16. The Medical Benefit Scheme is one of the welfare measures introduced by the Bank to its retired employees, or who would be retiring from service on attaining the age of superannuation. The scheme has no statutory force and it is in the nature of administrative circular. The scheme has been introduced by the bank after receiving the report of the Committee, which had been constituted by the Board of the Bank for framing a scheme for medical benefits to the retired employees in the bank. The committee taking into consideration the funds available in the medical benefit fund and number of retired employees, have thought it fit to recommend to the executive committee of the Central Board of the bank to restrict the benefit of the scheme only to the retired employees, who have retired from service on attaining the age of superannuation. Restricting the benefit under the scheme, depending on the available resources has been approved by the Apex Court in R.M.Bagga's case (Air 1998 SC 1703) wherein the court has observed that "no State of any country can have unlimited resources to spend on any of its projects. That is why it only approves its project to the extent it is feasible. The same holds good for providing medical facilities to its citizens including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finances permit". In the present case, since the resources available was limited, the Board has though it fit to extend the Medical Benefit Scheme initially on selective basis. Accordingly,t hey extended the benefit of the Scheme only to those employees of the bank, who have retired from the bank's service after attaining the age of superannuation. It is at this stage may be relevant to notice the age of retirement under the Service Rules of the bank. Rule 19.1 of the Service Rules of th4e bank envisages that an officer shall

retire from the service of the bank on attaining the age of 58 years or upon completion of thirty years of service or thirty years of pensionable service, if he is a member of the pension fund, whichever occurs first. The executive committee at its discretion may retire an officer from Bank's service, after he has attained 50 years of age or has completed 25 years of service or 25 years of pensionable service. The Bank may also permit an officer to retire from bank's service after he has completed 20 years of service or 20 years of pensionable service on a request made in writing by an officer/employee. The Board, while introducing the medical benefit scheme had thought it fit to exclude the later two categories of retired officers from the purview of the medical benefit scheme and has extended the benefit only to the first category, may be in keeping in view the length of service that an officer has put in the Bank. Merely because the benefit is not extended to the other categories of retired employees, in my view, it cannot be said that the provisions are either discriminatory or arbitrary or has no nexus with the object of the scheme in question. At this stage it is useful to refer to the observations made by Apex Court in R.L. Bagga's case wherein the Court ha stated:
"So far as questioning the validity of Governmental policy is concerned, in our view, it is not normally within the domain of any court to weigh pros and cons of the policy or to scrutinise it and test the degree of its beneficial or equitable disposition for the purpose of varying,l modifying or annulling it, based on however sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on a number of circumstances on facts, law, including constrains based on its resources. It is also based on expert opinion. It would be dangerous, if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm, which belongs to the executive."

17. Secondly, the Medical Benefit Scheme is a contributory scheme unlike payment of pension, which is a statutory liability undertaking by the Government and whatever became due and payable was budgeted for. If more members are admitted to the Scheme, it would pro-rata affect the share and by that process the purpose for which it is created may not be useful to its members unlike the pension fund, where the liability is incurred and has to be provided for in the budget. Therefore, it cannot be said that clause 3(1) of the Scheme is either arbitrary and unprincipled and in any way violative of constitutional provisions.

18. Thirdly, this is not one of those cases, where discrimination is made among pensioners, who are similarly situated. Accepting the petitioner's contention will have very serious consequences. Even a person who has retired on any other grounds can claim membership. This cannot be so, in view of the purpose and object of the Scheme. In my opinion, so long the Clause in the Scheme is made applicable in a reasonable manner, i.e., without bringing about discrimination between similarly situated persons, no interference is called for. Since prescription of the 30 years of service is neither arbitrary nor unreasonable, the complaint of discrimination must fail."

23. This court respectfully agrees with the said proposition laid down by the Karnataka High Court as it is a sound exposition of law. Mr.S.Kanniah, learned counsel for the respondents relied upon the pronouncement in Union of India Vs. Rakesh Kumar reported in 2001 Lab.I.C. 1406, where the Supreme Court considered the scope of Rule 19 of the Central Civil Services (Pension) Rules and repelled the challenge to the restriction imposed stipulating a particular number of years of service as eligible service for pension.

24. The Apex Court in this respect while considering the scope of Rule 19 held that the provision is not discriminatory nor it is violative of Art.14. The Apex Court held thus:-

"21. Learned counsel for the respondents submitted that on the basis of the GO, a number of persons are granted pensionary benefits even though they have not completed 20 years of service, and, therefore, at this stage, the Court should not interfere and see that the pensionary benefits granted to the respondents are not disturbed and are released as early as possible. In our view, for grant of pension the members of BSF are governed by the CCS (Pension) Rules. The CCS (Pension) Rules nowhere provide that a person who has resigned before completing 20 years of service as provided in Rule 48-A is entitled to pensionary benefits. Rule 19 of the BSF Rules also does not make any provision for grant of pensionary benefits. It only provides that if a member of the Force who resigns and to whom permission in writing is granted to resign then the authority granting such permission may reduce the pensionary benefits if he is eligible to get the pension. Therefore, by erroneous interpretation of the Rules if pensionary benefits are granted to someone it would not mean that the said mistake should be perpetuated by direction of the Court. It would be unjustifiable to submit that by appropriate writ, the Court should direct something which is contrary to the statutory rules. In such cases, there is no question of application of Article 14 of the Constitution. No person can claim any right on the basis of decision which is dehors the statutory rules nor can there be any estoppel. Further, in such cases there cannot be any consideration on the ground of hardship. If the Rules are not providing for grant of pensionary benefits it is for the authority to decide and frame appropriate rules but the Court cannot direct payment of pension on the ground of so-called hardship likely to be caused to a person who has resigned wit hout completing qualifying service for getting pensionary benefits. As a normal rule, pensionary benefits are granted to a government servant who is required to retire on his attaining the age of compulsory retirement except in those cases where there are special provisions.
22. In the result, there is no substance in the contention of the learned counsel for the respondents that on the basis of Rule 49 of the CCS (Pension) Rules or on the basis of the GO, the respondents who have retired after completing qualifying service of 10 years but before completing qualifying service of 20 years by voluntary retirement, are entitled to get pensionary benefits. The respondents, who were permitted to resign from service under Rule 19 of the BSF Rules before the attainment of the age of retirement or before putting such number of years of service as may be necessary under the Rules, to be eligible for retirement are not entitled to

get any pension under any of the provisions under the CCS (Pension) Rules. Rule 49 only prescribes the procedure for calculation and quantification of the pension amount. The G.O dated 27-12-1995 does not confer any additional right of pension on BSF employees."

25. The said pronouncements apply on all fours to the case on hand. Hence the Challenge to Rule 8(c) of the Pension Fund Rules cannot be sustained and it cannot be countenanced. Nor the petitioner could put forward the plea of discrimination.

26. In the light of the above discussions while holding that the writ petition is belated and the petitioner is guilty of laches in approaching this court after 8 long years.

27. This court also answers the points A to E against the writ petitioner and in favour of the respondents as the entire claim of the petitioner cannot be countenanced both factually and as per law.

28. In the result, the Writ Petition is dismissed. The parties shall bear their respective costs in this writ petition.

Internet:yes
Index:yes
gkv

Copy to:-

1. State Bank of India
by its Chairman
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2. State Bank of India
rep. by its Chief General Manager
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